

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
IN TACOMA

ISELA M. MALDONADO, an)
individual,)
) No. CV20-5428TLF
Plaintiff,)
)
v.) (Via Zoom & telephone)
)
COLUMBIA VALLEY EMERGENCY)
PHYSICIANS, LLC; EMCARE,)
INC.; EMCARE HOLDINGS,)
INC.; ENVISION HEALTHCARE)
HOLDINGS, INC.; and)
ENVISION HEALTHCARE)
CORPORATION,)
)
Defendants.)

DISCOVERY CONFERENCE

December 11, 2020

BEFORE THE HONORABLE THERESA L. FRICKE
UNITED STATES MAGISTRATE COURT JUDGE

Barry L. Fanning, RMR, CRR - Official Court Reporter

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1 **APPEARANCES:**

2 **For the Plaintiff:** Benjamin Feiler
3 Bryce McPartland
 MCGEHEE CHANG LANDGRAF FEILER

4 **For the Defendants:** David Jacobs
5 Jonah Retzinger
 EPSTEIN BECKER & GREEN

6 Emily Powell
7 CALFO EAKES & OSTROVSKY

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 p r o d u c e d w i t h c o m p u t e r - a i d e d t e c h n o l o g y

01:35:29PM

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01:35:29PM 1 THE CLERK: Good afternoon. United States
01:35:30PM 2 District Court for the Western District of Washington is
01:35:33PM 3 now in session. The Honorable Theresa L. Fricke
01:35:37PM 4 presiding.

01:35:37PM 5 THE COURT: This is Maldonado versus Columbia
01:35:46PM 6 Valley Emergency Physicians LLC, et al., Case No. 20-5428.
01:35:49PM 7 Would the parties please introduce yourself for the
01:35:51PM 8 record?

01:35:54PM 9 MR. FEILER: Ben Feiler and Bryce McPartland on
01:35:58PM 10 behalf of plaintiffs.

01:36:02PM 11 MR. JACOBS: David Jacobs, Emily Powell and Jonah
01:36:08PM 12 Retzinger on behalf of defendants.

01:36:10PM 13 THE COURT: And I believe we have our court
01:36:12PM 14 reporter on the line?

01:36:26PM 15 COURT REPORTER: Good afternoon. Yes, your
01:36:28PM 16 Honor.

01:36:28PM 17 THE COURT: Okay. The parties have submitted a
01:36:30PM 18 joint Rule 26(f) report, Docket 43.

01:36:33PM 19 And before issuing a scheduling order, I wanted to
01:36:37PM 20 give the parties an opportunity to do some problem
01:36:43PM 21 solving, and I will get a little more clarity on exactly
01:36:48PM 22 where the pinch points are.

01:36:51PM 23 I will start with plaintiff's counsel. I was looking
01:36:55PM 24 at Page 7 of the Rule 26(f) report, and it appears to me
01:37:02PM 25 that plaintiff's counsel is objecting to bifurcating the

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01:37:06PM 1 discovery process; is that correct?

01:37:09PM 2 MR. FEILER: Yes, your Honor, that is correct.

01:37:12PM 3 THE COURT: And what is your theory of why we
01:37:14PM 4 should not bifurcate it?

01:37:17PM 5 MR. FEILER: This case is a simple case. You
01:37:21PM 6 know, it's whether or not plaintiff and class members were
01:37:28PM 7 billed above what is considered a usual and customary
01:37:32PM 8 rate. Either they were or weren't. We need to be able to
01:37:35PM 9 do discovery on all the issues relating to class
01:37:38PM 10 certification, including numerosity, finality, and issues
01:37:43PM 11 of the sort.

01:37:45PM 12 And some of the issues relating to bifurcation that
01:37:49PM 13 have been raised by the defendants, specifically relating
01:37:52PM 14 to their (inaudible) agreements (inaudible) insurance
01:37:55PM 15 companies that we think are relevant to the class
01:37:58PM 16 certification (inaudible), because they show what parties
01:38:06PM 17 with equal negotiating power of that of the defendant paid
01:38:10PM 18 for the medical bills at issue.

01:38:12PM 19 And as we have last month, that is reasonable and
01:38:20PM 20 regular -- excuse me, reasonable and regular, usual and
01:38:22PM 21 customary rate. And to the extent that you were billed in
01:38:26PM 22 excess of that amount, you fit within the class.

01:38:32PM 23 And so we think that the issues are relatively
01:38:37PM 24 simple, and we think that the issues that we have put into
01:38:41PM 25 the proposed scheduling Rule 26 report on Pages 11 and 12

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01:38:52PM 1 are all relevant to class certification discovery in the
01:39:01PM 2 case.

01:39:02PM 3 That kind of sums up the discovery items in the case.
01:39:10PM 4 But at a minimum, we don't want to get stuck in a position
01:39:15PM 5 where defendants are viewing that -- we didn't show some
01:39:22PM 6 class certification because we don't have the documents.
01:39:26PM 7 Those documents, all of the information is in the
01:39:29PM 8 possession of the defendants.

01:39:31PM 9 I am happy, due to the circumstances of COVID, to
01:39:36PM 10 give them additional time to respond to certain discovery
01:39:38PM 11 requests, if needed. But we would like the discovery to
01:39:43PM 12 be wide open (inaudible).

01:39:49PM 13 THE COURT: I will hear from the defense.

01:39:51PM 14 MR. JACOBS: Thank you, your Honor. As you know,
01:39:53PM 15 we believe that bifurcation is warranted in this action.
01:39:56PM 16 I would say in light of COVID it is especially warranted
01:40:01PM 17 now, with the burden on our client. The emergency room
01:40:07PM 18 business here is extreme, as the Court can understand.

01:40:12PM 19 We don't even know if there is a class that is
01:40:14PM 20 certifiable here. We don't believe that there is one. We
01:40:18PM 21 think discovery should be limited, as outlined on our
01:40:22PM 22 Page 13 of the report, to see if a class can be certified.
01:40:31PM 23 And if so, go on to full-blown discovery.

01:40:35PM 24 I will say this, your Honor: I would ask -- I did
01:40:39PM 25 ask class counsel exactly what the class was in this case.

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01:40:50PM 1 And the response was right now (inaudible) discovery in
01:40:55PM 2 Washington, but no promises going forward.

01:41:04PM 3 I appreciate his answer, but it is a nonanswer. It
01:41:08PM 4 is hard (inaudible). Obviously, based on their
01:41:15PM 5 representations in their reply and this Court's
01:41:19PM 6 recommendation (inaudible), we understand that the
01:41:22PM 7 limitation period of three years (inaudible) Washington.
01:41:28PM 8 The only causes of action remaining in the case are of a
01:41:31PM 9 contractual nature.

01:41:34PM 10 That notwithstanding, the discovery that has been
01:41:38PM 11 requested by the plaintiffs, which is on Pages -- Of
01:41:56PM 12 course, I can't -- It is quite extensive. It would be --
01:42:02PM 13 most of it would be totally unnecessary were the matter
01:42:06PM 14 bifurcated. We believe it (inaudible).

01:42:13PM 15 THE COURT: Is your primary reason that -- it's
01:42:22PM 16 not only the COVID-19 pandemic difficulties that make the
01:42:27PM 17 discovery process onerous, but also proportionality, and
01:42:33PM 18 doing a bifurcated process may have some benefits in terms
01:42:40PM 19 of the limitation of costs over the long haul in the case?

01:42:47PM 20 MR. JACOBS: Exactly correct, your Honor.
21 (Inaudible).

22 COURT REPORTER: Excuse me, your Honor. There is
23 some feedback and I am having some difficulty
01:43:15PM 24 understanding counsel.

01:43:15PM 25 THE COURT: I'm wondering if it might be the way

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01:43:20PM 1 that the audio is broadcast. I'm hearing it as there is
01:43:26PM 2 sort of fading in and fading out. Is that what you are
3 hearing, Mr. Fanning?

4 COURT REPORTER: No, your Honor. What I'm
01:43:42PM 5 hearing is like an echo in a canyon.

01:43:42PM 6 THE CLERK: Your Honor, this is Traci. I have
01:43:43PM 7 contacted the IT department. They are trying to work
01:43:46PM 8 something out. It might be the feedback from the
01:43:49PM 9 courtroom.

01:43:51PM 10 THE COURT: I'm going to take a short recess
01:43:54PM 11 while our IT people do some problem solving, because, of
01:43:58PM 12 course, we want to make sure our court reporter can take
01:44:01PM 13 all of this down properly.

01:44:04PM 14 Mr. Fanning, for everything that has been stated so
01:44:06PM 15 far on the record, were you able to make it out or was it
16 too garbled?

17 COURT REPORTER: Your Honor, I hate to say this,
01:44:18PM 18 but it was too garbled.

01:44:18PM 19 THE COURT: The Court will take a recess. We
01:44:21PM 20 will try to work out some of these technical issues and
01:44:24PM 21 then we will come back on the record. Thank you.

01:50:06PM 22 (At this time a short recess was taken.)

01:50:06PM 23 THE COURT: I understand from our deputy clerk of
01:50:09PM 24 the court that we were actually able to fix this. But we
01:50:14PM 25 want to do at least a small test to make sure.

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01:50:18PM 1 Mr. Fanning, are you able to hear me without that annoying
01:50:23PM 2 feedback?

3 COURT REPORTER: I am, your Honor. We did a bit
4 of a test before we started, and it sounds like it has
01:50:23PM 5 been corrected.

01:50:40PM 6 THE CLERK: I want to make sure there is no echo.
01:50:42PM 7 There might be a slight one, but not bad.

01:50:48PM 8 MR. JACOBS: I'm still hearing an echo. But it
01:50:51PM 9 is really -- I think maybe we all are, but it is up to the
01:50:58PM 10 court reporter that he can understand what counsel are
01:50:59PM 11 saying, and the Court, obviously.

12 COURT REPORTER: There is no echo coming from
13 you, Mr. Jacobs. Would you mind saying something, Mr.
14 Feiler?

01:51:13PM 15 MR. FEILER: Is there an echo when I talk?

16 COURT REPORTER: Yes, there is, but it is not
01:51:37PM 17 quite as bad as it was earlier.

01:51:37PM 18 THE COURT: Shall we proceed then, Mr. Fanning,
01:51:39PM 19 and if it turns out you have difficulty deciphering what
01:51:42PM 20 is going on, please stop, and we will address the
21 technical issues again?

22 COURT REPORTER: That sounds good, your Honor. I
23 think I can go forward with what we have.

01:51:58PM 24 THE COURT: And so I will recap what my previous
01:52:03PM 25 questions were, so that our court reporter will be able to

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01:52:09PM 1 take down what it was that counsel's positions were. We
01:52:17PM 2 will start with plaintiff. Plaintiff was describing the
01:52:21PM 3 reasons why plaintiff believes there should not be
01:52:25PM 4 bifurcation.

01:52:28PM 5 And then let me also ask, if the Court orders
01:52:32PM 6 bifurcation of the discovery process, what is plaintiff's
01:52:37PM 7 proposed timeline for the first phase? I will ask
01:52:42PM 8 plaintiff's counsel to go forthwith on both of those
01:52:45PM 9 positions.

01:52:48PM 10 MR. FEILER: Thank you, your Honor. As I said
01:52:51PM 11 before, our position is that we think discovery should be
01:52:55PM 12 wide open since the beginning and not bifurcated in this
01:52:59PM 13 case. We think that the issues in the case are relatively
01:53:02PM 14 simple, and that written discovery can be entered in a
01:53:07PM 15 relatively short period of time that would give rise to
01:53:11PM 16 the production of documents and information that will
01:53:14PM 17 allow us class certification.

01:53:18PM 18 At a minimum, we need to be able to do discovery on
01:53:21PM 19 all issues related to class certification, including class
01:53:27PM 20 size, class damages, things along those lines.

01:53:31PM 21 As we currently have the class defined in our
01:53:39PM 22 pleadings, the class is made up of patients who were
01:53:45PM 23 charged more than the usual and customary rate. And we
01:53:50PM 24 define that rate as the rate paid by parties with equal
01:53:54PM 25 negotiating power to that of the defendants, including

01:53:58PM 1 major insurance companies.

01:54:00PM 2 And one of the areas that the defendants have
01:54:03PM 3 identified as problematic in relation to the first phase
01:54:07PM 4 of discovery is their managed care agreements they have
01:54:11PM 5 with insurance companies. But those documents would show
01:54:14PM 6 the amounts that insurance companies pay defendants in
01:54:19PM 7 relation to the care that is at issue here. So we think
01:54:22PM 8 it is absolutely relevant to the issues of class
01:54:25PM 9 certification, and that we should be able (inaudible) on
01:54:30PM 10 those issues now.

01:54:32PM 11 As it relates to the class itself, there has been
01:54:35PM 12 some discussion whether or not this is a national class or
01:54:41PM 13 a state class for the state of Washington. And we have
01:54:45PM 14 defined the class without reference to geographic
01:54:50PM 15 location.

01:54:50PM 16 In my conference with defense counsel, based on their
01:54:54PM 17 representations that they are having difficulties with
01:54:58PM 18 COVID-19, I agreed that we could limit the initial
01:55:04PM 19 discovery that's (inaudible) to the state of Washington.

01:55:07PM 20 As they pointed out, I didn't make any promises as to
01:55:10PM 21 limiting the class as a whole to the state of Washington,
01:55:14PM 22 because we believe this conduct is occurring on a national
01:55:19PM 23 basis.

01:55:20PM 24 As to the time frame for the initial phase of
01:55:23PM 25 discovery, I am trying to find where we may have made

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01:55:30PM 1 suggestions in the report --

01:55:34PM 2 THE COURT: The proposed schedule was set forth
01:55:37PM 3 on Page 11 of Docket 43. So first on Page 10, and then
01:55:45PM 4 goes to Page 11.

01:55:48PM 5 MR. FEILER: As I said before, we think that the
01:55:50PM 6 issues are clear and pretty simple in this case. You
01:55:55PM 7 know, so the initial phase of discovery, if it is
01:55:58PM 8 bifurcated, should be a shorter period of time than
01:56:05PM 9 offered by defendants. I don't think we need more than
01:56:07PM 10 six or seven months in order to do it, at most.

01:56:12PM 11 That being said, I do recognize defendants are having
01:56:17PM 12 issues related to COVID-19. And I am happy to work with
01:56:20PM 13 them. But I would like to get this process started and
01:56:26PM 14 have reasonable goals set in the case to keep the case
01:56:30PM 15 moving forward.

01:56:36PM 16 So I think that we can have the first phase of
01:56:40PM 17 discovery wrapped up, if it is bifurcated, by mid to three
01:56:49PM 18 quarters of the way through 2021. And then have a trial
01:56:53PM 19 setting maybe in early 2022. And that's plaintiff's
01:57:01PM 20 position.

01:57:02PM 21 THE COURT: So in plaintiff's proposed
01:57:06PM 22 scheduling, the proposal was that discovery would be
01:57:18PM 23 completely finished up by August 27th, 2021. I am looking
01:57:28PM 24 at Page 10 of Docket 43. And then the defense proposal
01:57:37PM 25 was for Phase I to be finished, for purposes of class

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01:57:44PM 1 certification only, by November 5th, 2021.

01:57:52PM 2 So if we went with the defense proposal, that would
01:57:57PM 3 be a little more than three-quarters of the way through
01:58:00PM 4 2021, but not by much. So the Court is inclined to go
01:58:06PM 5 with that, both in light of the COVID-19 pandemic and in
01:58:12PM 6 light of being careful about proportionality.

01:58:18PM 7 So given that that is what the Court is intending to
01:58:22PM 8 do, I will go ahead and ask the defense, are there
01:58:28PM 9 specific concerns that the defense has about anything else
01:58:35PM 10 in this joint Rule 26(f) report, assuming that the Court
01:58:42PM 11 goes forward with November 5th, 2021, as the discovery
01:58:48PM 12 cutoff date for class certification, and then orders that
01:58:52PM 13 the class certification motion would be November 24th,
01:58:57PM 14 noted for hearing in the beginning of January 2022? In
01:59:02PM 15 other words, I would be giving the defense the schedule it
01:59:05PM 16 asked for, but are there any other issues the defense has
01:59:09PM 17 besides that?

01:59:10PM 18 MR. JACOBS: A couple, your Honor, if I may. I
01:59:15PM 19 know that Mr. Feiler was discussing what he thought was
01:59:19PM 20 within class certification discovery, and specifically
01:59:24PM 21 mentioned the managed care contracts. We do not see those
01:59:29PM 22 as anything to do with class certification. It goes to
01:59:37PM 23 the merits at some point, but it certainly doesn't go to
01:59:39PM 24 class certification. We can argue about that on another
01:59:43PM 25 day.

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01:59:44PM 1 We are comfortable if the Court were to (inaudible)
01:59:52PM 2 with the schedule laid out.

01:59:53PM 3 One other thing, your Honor, just for purposes of
01:59:55PM 4 clarity. I'm sorry. The (inaudible) limitations is three
02:00:01PM 5 years. The report, at least plaintiff's portion of the
02:00:05PM 6 report, is asking for discovery back in 2010.
7 (Inaudible.)

8 COURT REPORTER: Mr. Jacobs, you're cutting out.
9 Could I ask that you repeat your last sentence? I
10 apologize for interrupting.

02:00:46PM 11 MR. JACOBS: I wanted to get clarity on the scope
02:00:48PM 12 of discovery, because plaintiff has set forth discovery
02:00:53PM 13 going back to 2010. The Court in its recommendation
14 (inaudible).

15 COURT REPORTER: Your Honor, I apologize again
16 for interrupting, but I can't make out what Mr. Jacobs is
02:01:31PM 17 saying. There is some kind of audio malfunction.

02:01:31PM 18 THE COURT: Okay. I think what we have
02:01:32PM 19 accomplished so far is sufficient to get a scheduling
02:01:35PM 20 order in place. Are you able to hear me, Mr. Fanning?

21 COURT REPORTER: Your Honor, I can hear you
02:01:50PM 22 perfectly.

02:01:50PM 23 THE COURT: Let's try one more time.
02:01:55PM 24 Ms. Whiteley, if you could contact IT and see if there is
02:02:00PM 25 anything more that can be done about the audio. It sounds

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02:02:05PM 1 like we have fixed it in terms of my communication and
02:02:08PM 2 Mr. Fanning being able to hear me. But now there seems to
02:02:13PM 3 be difficulty with him hearing the attorneys. Let's just
02:02:14PM 4 try one more time to see if we can fix that. Otherwise, I
02:02:19PM 5 think what we will need to do is reset this hearing after
02:02:21PM 6 I issue a scheduling order. And after the parties have a
02:02:25PM 7 chance to meet and confer, we can do a follow-up hearing.

02:02:29PM 8 THE CLERK: Okay, your Honor. I will need to get
02:02:31PM 9 ahold of IT again. One suggestion I have is maybe we can
02:02:34PM 10 all use the conference phone line right now, and I can
02:02:38PM 11 give that, and we all dial in and forego Zoom altogether.

02:02:42PM 12 THE COURT: I'm okay with that. Counsel? Okay.

02:02:49PM 13 THE CLERK: I will get the number for everyone.

02:02:52PM 14 THE COURT: Ms. Whiteley, should I just remain in
02:02:55PM 15 the courtroom?

02:02:56PM 16 THE CLERK: Whatever is convenient. I will be
02:02:59PM 17 disconnecting Zoom. If you want to join by work phone or
02:03:03PM 18 the phone in your courtroom. You might want to go back to
02:03:06PM 19 your desk. That might be the best.

02:03:08PM 20 THE COURT: Sounds good. The Court is now in
02:03:09PM 21 recess. We will reconvene in a moment.

02:05:42PM 22 (Recess.)

02:05:51PM 23 THE CLERK: I think we can commence the hearing
02:05:53PM 24 again.

02:05:53PM 25 THE COURT: Thank you, Ms. Whiteley. Going back

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02:05:56PM 1 to the concern that the defense was raising, because
02:06:03PM 2 Mr. Fanning was having difficulty hearing you, I will give
02:06:06PM 3 you another opportunity to explain what concern or
02:06:10PM 4 concerns you had that are separate from the bifurcation
02:06:16PM 5 issue.

02:06:17PM 6 MR. JACOBS: Thank you, your Honor. David Jacobs
02:06:20PM 7 speaking. Our concern -- When we drafted the schedule,
02:06:26PM 8 what we had in mind was the statute of limitations period
02:06:32PM 9 as referenced in your Honor's recommendation, and is
02:06:37PM 10 congruent with the statute of limitations in the state of
02:06:41PM 11 Washington. The requests, it sounds like, that the
02:06:45PM 12 plaintiffs are going to serve, go back to 2010, which is
02:06:50PM 13 horrendously burdensome for our client and not going to be
02:06:53PM 14 relevant to anything that's going to be in place if the
02:06:56PM 15 statute doesn't go back anywhere near that far.

02:06:59PM 16 But the client systems are complicated, to say the
02:07:03PM 17 least. And they have changed systems a couple of times
02:07:06PM 18 since 2010. So that becomes a huge issue for us.

02:07:12PM 19 THE COURT: And so you are looking for a date
02:07:14PM 20 range that is something less than 2010. Is there a
02:07:21PM 21 response from plaintiff on that?

02:07:27PM 22 MR. FEILER: Your Honor, we are happy to limit
02:07:29PM 23 the discovery to less than 2010. You know, a period going
02:07:36PM 24 back five years would be nice, from the date of the
02:07:41PM 25 incident in question. I do recognize that the statute of

02:07:46PM 1 limitations for the claims that are made is three years.
02:07:51PM 2 And so at a very minimum, we would request to be able to
02:07:54PM 3 get discovery at least going back three years.

02:07:59PM 4 THE COURT: Okay. It seems to me that the
02:08:01PM 5 three-year statute of limitations does define the date
02:08:05PM 6 range. And so when you put together your discovery
02:08:10PM 7 requests, I would expect that that would be your date
02:08:15PM 8 range, is the three-year statute of limitations.

02:08:19PM 9 If there are any exceptions to that, then you can
02:08:23PM 10 meet and confer with the defense for whatever those
02:08:25PM 11 limited exceptions might be.

02:08:30PM 12 MR. FEILER: Yes, your Honor.

02:08:31PM 13 THE COURT: And then are there any other matters
02:08:33PM 14 from the defense that you wanted to raise?

02:08:37PM 15 MR. JACOBS: Not that I haven't already raised,
02:08:40PM 16 your Honor. We can obviously address what Mr. Feiler
02:08:44PM 17 raised, what he thought was within class discovery. That
02:08:47PM 18 is really more in the nature of a discovery dispute than a
02:08:51PM 19 scheduling issue.

02:08:52PM 20 THE COURT: Okay. And then I would imagine the
02:08:56PM 21 parties are going to do a confidentiality protective
02:09:01PM 22 order, and then also an ESI protocol agreement?

02:09:12PM 23 MR. JACOBS: Yes, your Honor, we are. As a
02:09:14PM 24 matter of fact, those are almost completed. We will
02:09:17PM 25 circulate to Mr. Feiler very soon.

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02:09:19PM 1 THE COURT: Excellent. Any other issues the
02:09:22PM 2 parties wanted to discuss as long as we are in conference
02:09:29PM 3 about scheduling and discovery matters?

02:09:29PM 4 MR. FEILER: Your Honor, the only other thing
02:09:30PM 5 from plaintiff's counsel is that we would request, as a
02:09:32PM 6 general notion, to be allowed to conduct discovery on
02:09:35PM 7 anything that we will need in relation to class
02:09:38PM 8 certification in the initial phase.

02:09:45PM 9 THE COURT: I believe that is a reasonable
02:09:50PM 10 request. Of course, it is going to need to be something
02:09:53PM 11 that meets the proportionality requirement of the federal
02:10:01PM 12 rules. I'm sure that both counsel realize that cost is
02:10:04PM 13 important and that efficiency is important to keep the
02:10:07PM 14 case moving. So I trust that you will come up with
02:10:10PM 15 parameters for your request that will make sense.

02:10:13PM 16 Electronic discovery is always a business that takes
02:10:18PM 17 some, you know, trial runs to see what is working and how
02:10:24PM 18 efficiently you can get through things. I think the
02:10:30PM 19 electronic discovery agreement is going to be really
02:10:33PM 20 important here.

02:10:38PM 21 MR. FEILER: Thank you, your Honor.

02:10:39PM 22 MR. JACOBS: Thank you, your Honor.

02:10:40PM 23 THE COURT: The Court will expect that you will
02:10:43PM 24 be filing the electronic discovery agreement and the
02:10:47PM 25 protective order before the holiday. I would like to see

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02:10:54PM 1 that filed by the 23rd. Do you anticipate any problem
02:10:58PM 2 being able to do that by December 23rd?

02:11:05PM 3 MR. JACOBS: Speaking for the defense, we don't,
02:11:07PM 4 because I think we drafted it. Mr. Feiler hasn't seen it
02:11:10PM 5 yet, but we will get it to him forthwith.

02:11:15PM 6 MR. FEILER: I don't see any issue with that,
02:11:16PM 7 your Honor. We will do everything we can to make sure we
02:11:18PM 8 meet that deadline.

02:11:19PM 9 THE COURT: Okay. And then I will issue a
02:11:22PM 10 scheduling order that is pertaining to the Phase I of
02:11:27PM 11 discovery. And it will anticipate that you will begin the
02:11:32PM 12 discovery process after the 23rd of December, because
02:11:36PM 13 that's when your confidentiality agreement and electronic
02:11:40PM 14 discovery agreement will be in place.

02:11:42PM 15 I appreciate everyone's time. I'm glad that we were
02:11:48PM 16 able to sort through the issues. If there are ever times
02:11:51PM 17 when you need to do an informal conference with the Court,
02:11:54PM 18 please let Ms. Whiteley know and we will be happy to
02:11:57PM 19 schedule one for you.

02:11:59PM 20 MR. FEILER: Thank you, your Honor.

02:12:01PM 21 MR. JACOBS: Thank you, your Honor.

02:12:02PM 22 THE COURT: That concludes today's hearing.
02:12:04PM 23 Thank you for your patience.

24 (Proceedings recessed.)
25

C E R T I F I C A T E

I, Barry Fanning, Official Court Reporter for the
United States District Court, Western District of
Washington, certify that the foregoing is a true and
correct transcript from the record of proceedings in the
above-entitled matter.

/s/ Barry Fanning
Barry Fanning, Court Reporter